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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1471

UNITED STATES OF AMERICA
AND FEDERAL COMMUNICATIONS
COMMISSION

v.

NEW JERSEY STATE LOTTERY COMMISSION

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

AMICUS CURIAE BRIEF OF THE STATE OF CONNECTICUT IN SUPPORT OF THE NEW JERSEY STATE LOTTERY COMMISSION

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Your amicus is a state that has a lottery, and is affected by *United States of America and Federal Communications Commission* v. *New Jersey State Lottery Commission*, No. 73-1471.

1. It is our position that the ruling of the Federal Communications Commission, prohibiting news broadcasts of a state lottery's winning number, is a prior restraint upon freedom of the press, which is prohibited by the First and Fourteenth Amendments. As stated in the decision below by Chief Judge Gibbons of the Third Circuit:

> "Broadcast news media, because of the immediate and highly transitory nature of their news coverage, present particular problems in this regard. They, above all news media, serve the public need to be informed on what is of immediate though of passing interest. They at least as much as the other news media should be left free to make their own editorial decisions as to what news will best serve their public. The only restraints on information by which, in the news context, the broadcast media may constitutionally be bound are those imposed by what little is left of the law of libel since *New York Times Co.* v. *Sullivan*, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed. 686 (1964) and its progeny, and by the law of obscenity (citations omitted). Clearly the winning lottery number is, on Thursday afternoon, press information protected by the first amendment."
>
> 491 F.2d 219, 223.

2. It is further noted that the Federal Communications Commission is not exempt from the dictates of the First Amendment, and this was recognized by Congress in enacting 47 U.S.C. § 326, which states:

> "Nothing in this chapter shall be understood or construed to give the Commission the power of censorship over the radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by means of radio communication."

3. These considerations are also significant, because the revenue devices involved in these cases are instrumental components of the fiscal systems of many state governments.

For these reasons, your amicus respectfully submits that the judgment of the United States Court of Appeals for the Third Circuit be affirmed.

Dated this 9th day of September, A.D., 1974.

Respectfully submitted,

AMICUS CURIAE

STATE OF CONNECTICUT

ROBERT K. KILLIAN
Attorney General

By: BARNEY LAPP
Assistant Attorney General

By: DANIEL R. SCHAEFER
Assistant Attorney General

CERTIFICATE OF SERVICE

I, Daniel R. Schaefer, Attorney for the State of Connecticut, Amicus Curiae, certify that a copy of the foregoing Amicus Curiae Brief, was mailed, via U.S. Mail, postage prepaid, to the following attorneys of record: Stephen Skillman, Assistant Attorney General, State of New Jersey, State House Annex, Trenton, New Jersey 08625; Robert H. Bork, Solicitor General, Department of Justice, Washington, D.C. 20530; Thomas B. Kauper, Assistant Attorney General, Department of Justice, Washington, D.C. 20530; Louis Claiborne, Assistant Solicitor General, Department of Justice, Washington, D.C. 20530; Danny J. Boggs, Assistant Solicitor General, Department of Justice, Washington, D.C. 20530; Ashton R. Hardy, General Counsel, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554; Joseph A.

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DANIEL R. SCHAEFER
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UNITED STATES OF AMERICA AND FEDERAL COMMUNICATIONS COMMISSION, Petitioners

v.

NEW JERSEY STATE LOTTERY COMMISSION, Respondent

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

STATEMENT IN LIEU OF BRIEF OF THE STATE OF NEW HAMPSHIRE, INTERVENOR, IN SUPPORT OF THE NEW JERSEY STATE LOTTERY COMMISSION

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IN THE
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The court below granted New Hampshire's motion to intervene in this proceeding. New Hampshire's motion to intervene was grounded on the following facts. New Hampshire operates a sweepstakes and lottery program under the provisions of New Hampshire

Revised Statutes Annotated 284:21-a - 21-v, as amended. This program is in essential respects similar to the New Jersey program so far as concerns the applicability of 18 U.S.C. 1304 and the regulations of the Federal Communications Commission to the broadcasting of information having news value relating to the operation of the program. The Memorandum Opinion and Order of the Commission which is the subject of this proceeding would, if sustained, constitute clear precedent and statement of position for the Commission in dealing with broadcasts of direct concern to the State of New Hampshire in the operation of its program. New Hampshire submits, as it has done below, that the Commission's Memorandum Opinion and Order are based in the first instance on a mistaken interpretation of 18 U.S.C. 1304 and would, if given effect, result in

substantial detriment to the legitimate interests of New Hampshire.

New Hampshire is familiar with the reasons advanced on behalf of the Respondent New Jersey State Lottery Commission's position in this matter. New Hampshire joins in Respondent's statement of these reasons and submits that the judgment of the United States Court of Appeals for the Third Circuit should be affirmed.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE,
Intervenor

Warren B. Rudman
Attorney General

David H. Souter
Deputy Attorney General

Counsel for Intervenor

September 18, 1974